National City Bank of Chicago v. *National Bank of the Republic of Chicago*, 300 Ill. 103, 132 N. E. 832.

For a discussion of the principles involved, see NOTES, *supra*, p. 749.

CARRIERS — INJURY TO GOODS — LIABILITY WHEN GOODS ARE ACCOMPANIED BY OWNER. — The defendant operated a ferry for hire, holding himself out to serve everyone who should desire to make use of the facilities he offered. The boat he used was not equipped with chains, bumpers, or end-gates. The plaintiff drove his team of mules and wagon on the boat to be ferried. Shortly after the boat left the landing the mules for some unknown reason backed so that the hind wheels of the wagon hung in the water. The plaintiff undertook to make the mules pull the wagon back on the boat. The wagon, however, dragged the mules into the water and they were drowned. The trial court, without jury, gave judgment for the plaintiff. The defendant appeals, assigning as error that the court had concluded as a matter of law that the defendant was liable by reason of negligence and that as a matter of law the defendant was liable as an insurer of goods. *Held*, that the judgment be affirmed. *Bean* v. *Hinson*, 235 S. W. 327 (Tex. App.).

For a discussion of the principles involved, see NOTES, *supra*, p. 747.

CONFLICT OF LAWS — DOMICIL — EFFICACY OF INTENT TO RETAIN ORIGINAL DOMICIL WHEN OLD HOME IS ABANDONED AND NEW ONE ESTABLISHED. — In a transfer tax proceeding it became necessary to determine the decedent's domicil. His domicil of origin was Connecticut, where he married and raised a family. When sixty years of age, he, with his family, moved to New York. It seems, from the facts and their treatment by the court, that the decedent abandoned his Connecticut home and established a new home in New York; but he unequivocally declared that "he had no intention of changing his legal residence." He died in New York twenty years later. A statute imposed on the decedent's executor the burden of proving that the decedent was not domiciled in New York. (1916 N. Y. LAWS, c. 551, § 1; TAX LAW, § 243.) *Held*, that the decedent was domiciled in Connecticut at the time of his death. *Matter of Lyon*, 191 N. Y. Supp. 260 (Surr. Ct.).

It was at one time thought that the *animus* necessary for a change of domicil was an intent to acquire a new civil status. See *Att'y Gen'l* v. *Countess de Wahlstatt*, 3 H. & C. 374, 387. See 23 HARV. L. REV. 211. But this has probably never been, and certainly is not now, the accepted common-law doctrine. *Douglas* v. *Douglas*, L. R. 12 Eq. Cas. 617. See 35 HARV. L. REV. 189, 191. On the contrary, if one goes to another jurisdiction with the intention merely of becoming subject to the personal law of that jurisdiction, but with no intent to make his home there, he does not acquire a new domicil. *Kerby* v. *Charlestown*, 78 N. H. 301, 99 Atl. 835; *Chaine* v. *Wilson*, 1 Bosw. (N. Y. Super. Ct.) 673. See *Semple* v. *Commonwealth*, 181 Ky. 675, 679, 205 S. W. 789, 791. But see *Matter of Newcomb*, 192 N. Y. 238, 84 N. E. 950; *Winsor's Estate*, 264 Pa. St. 552, 107 Atl. 888; 33 HARV. L. REV. 863. The *animus* necessary for the acquisition of a new domicil is an intent to establish a new home. Not only is this necessary, but, combined with presence, it is conclusive of a change of domicil. The principal case, holding that an intent not to change the domicil controls, seems wrong. *In re Steer*, 3 H. & N. 594; *Butler* v. *Hopper*, 1 Wash. Circ. Ct. 499 (D. Pa.); *Butler* v. *Farnsworth*, 4 Wash. Circ. Ct. 101 (D. Pa.); *Lyman* v. *Fiske*, 17 Pick. (Mass.) 231; *Dickinson* v. *Brookline*, 181 Mass. 195, 63 N. E. 331; *Matter of Rooney*, 172 App. Div. 274, 159 N. Y. Supp. 132; *Turner* v. *Turner*, 87 Vt. 65, 88 Atl. 3. See JACOBS, DOMICIL, §§ 148–149. *Cf. In re Paullin's Will*, 113 Atl. 240 (N. J.). Domicil is merely a legal consequence of the establishment of a home; given that fact, the result should be independent of the will of the party. See DICEY, DOMICIL, 85. See also

Joseph H. Beale, "The Progress of the Law: The Conflict of Laws," 34 HARV. L. REV. 50, 52. But see 20 COL. L. REV. 87. An intent to retain an abandoned domicil should have no more effect than an intent to create a new one.

CONTRACTS — RESCISSION FOR MUTUAL MISTAKE OF FACT. — The defunct B bank entered into a contract with the S bank whereby the S bank agreed to take over the assets and assume all the liabilities of the B bank, and to hold the stockholders of the B bank harmless; and M, a principal stockholder in the B bank, agreed to buy some of its fixed assets from the S bank. After this agreement between the banks was made, L, an officer of the S bank, entered into a contract with M to buy all of his stock in the B bank. Unknown to all the parties a defalcation had occurred, and the assets of the B bank were really only about 50% of the amount represented by its books. The S bank refused to proceed with its contract, and a new one was executed in which the stockholders of the B bank agreed to an assessment on their stock to make up the deficiency. L brought suit to rescind his contract with M. *Held*, that the relief be granted. *Lindeberg* v. *Murray*, 201 Pac. 759 (Wash.).

For a discussion of the principles involved, see NOTES, *supra*, p. 757.

CORPORATIONS — PROMOTERS — LIABILITY OF PROMOTER TO CORPORATION PROMOTED ON ISSUE OF STOCK FOR OVERVALUED PROPERTY. — In preparation for the organization of the A Corporation, X, the promoter, entered into contracts with the stockholders of B Corporation whereby they agreed to receive for each share of B stock one share of A stock, upon the formation of A Corporation. Unknown to the B stockholders, X obtained an option from Y to purchase, for $50000 of A stock, the secret formulae owned by Y and used in the business of the B Corporation. Later, the A Corporation, with X in complete control through the use of dummy directors, was organized with a capital stock of $500000. X caused $15000 capital stock of A Corporation to be issued to the B stockholders in accordance with the above agreement. X also caused $300000 capital stock of A Corporation to be issued to Y, who held this stock for the benefit of X. X sold this stock to innocent purchasers and kept the proceeds. The A Corporation sues X, alleging the above facts and that the formulae were of no value. *Held*, that a demurrer to the complaint be overruled. *American Barley Co.* v. *McCourtie*, 185 N. W. 506 (Minn.).

With a laudable desire to redress a palpable fraud, judges are too apt blindly to permit a corporation to recover "secret profits" from its promoters, regardless of whether or not the corporation has been damaged. It is submitted that, in situations where corporate creditors are not involved, the cases should be divided into two classes. Where the corporation conveys its assets or executes its obligation in return for overvalued property sold to it by promoters, the corporation (unless it has acted through an independent and informed board of directors) can obtain redress for the wrong done it. *Erlanger* v. *New Sombrero Phosphate Co.*, 3 App. Cas. 1218; *Davis* v. *Las Ovas Co.*, 227 U. S. 80; *South Joplin Land Co.* v. *Case*, 104 Mo. 572, 16 S. W. 390. See 1 MORAWETZ, PRIVATE CORPORATIONS, 2 ed., §§ 291–292. But where, as in the principal case, all that the corporation did was to issue its stock for the promoters' property, the corporation has not been damaged; for a share of stock is not an asset or an obligation of the corporation issuing it — it is merely the holder's fractional interest in the corporation. See R. D. Weston, "Promoters' Liability: Old Dominion *v.* Bigelow," 30 HARV. L. REV. 39. *Cf. Old Dominion Copper Co.* v. *Lewisohn*, 210 U. S. 206. *Contra, Old Dominion Copper Co.* v. *Bigelow*, 203 Mass. 159, 89 N. E. 193; *Pietsch* v. *Milbrath*, 123 Wis. 647, 101 N. W. 388, 102 N. W. 342. See also 22 HARV. L. REV. 48; 58 UNIV. OF PA. L. REV. 226. It has been suggested that the repentant corporation might sue the promoters and recover as trustee for those actually damaged. *Cf.*